

#### **405 KAR 5:082. Reclamation bond.**

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for when bond is required, bond amount, type of payment, bond forfeiture, and bond forms, for noncoal mineral operations.

Section 1. Applicability. A reclamation bond shall be required if the cabinet:

- (1) Finds the mineral operation to be temporary; or
- (2) Finds that the applicant previously has not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet.

Section 2. Bond Amount. (1) If a reclamation bond is required pursuant to Section 1 of this administrative regulation, the mineral operator shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the penal sum of not less than \$100 nor more than \$500 for each acre or fraction of an acre, with a minimum bond of \$2,000, for the permitted area.

(2) A mineral permittee may request reduction of the required reclamation bond amount at any time if the mineral permittee's method of mineral operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and if the mineral operation complies with all applicable statutes and administrative regulations and the permit plan.

Section 3. Type of Payment. (1) Reclamation bond shall be either a surety bond or a cash bond which may include:

- (a) Certificates of deposit;
- (b) Letters of credit;
- (c) Acceptable escrow accounts; or
- (d) A combination of these bonding methods.

(2) If a surety bond is filed, it shall be accompanied by a power of attorney affidavit allowing the surety to act on behalf of the mineral permittee with respect to reclamation.

Section 4. Bond Forfeiture. (1) The cabinet shall have the authority to forfeit a bond if the mineral operation is not conducted in accordance with the statutes, administrative regulations, and the permit plan as approved by the cabinet.

(2)(a) The entire bond may be forfeited and deposited in an appropriate account for use in the payment of all costs associated with the reclamation and restoration of the permit area to which the forfeited bond applies.

(b) If forfeiture of the bond is required, the cabinet shall send written notification by certified mail, return receipt requested, to the mineral permittee and the surety holding the bond of the cabinet's decision. This notification shall:

1. Explain the reasons for the forfeiture;
2. Indicate the amount to be forfeited; and
3. Advise the mineral permittee and those responsible for the bond of their right to a hearing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Noncoal Performance Bond, NCR-9", February 2017;
- (b) "Letter of Credit, NCR-10", January 2017;
- (c) "Escrow Agreement, NCR-11", February 2017; and
- (d) "Request for Bond Release, NCR-12", February 2017.

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